

Manubhai & Shah LLP

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NEWSLETTER

April 2021

Covering Updates for the Month of March' 21
For private circulation and clients only



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DIRECT TAX UPDATES

DIRECT TAX CIRCULARS & NOTIFICATIONS

1. Vivad se Vishwas Act, 2020 (C.B.D.T. Circular No. 3/2020, Dated 04.03.2021)

The C.B.D.T. has notified that under section 10 of Vivad se Vishwas Act, it is hereby clarified that the Assessing Officer shall pass consequential order under the Act after the DA has passed orders under sub-sections (1) and (2) of section 5 of Vivad se Vishwas Act.

3. Reporting requirement under clause 30c and clause 44 of tax audit report in form no. 3CD (C.B.D.T. Circular No. 5/2020, Dated 25.03.2021)

The C.B.D.T. has decided that the reporting under clause 30C (Reporting of impermissible arrangement as provided under sec 96 of the Income tax Act) and clause 44 (Reporting of GST details) of the Tax Audit Report which was kept in abeyance till 31st March, 2021 shall be kept in abeyance till 31st March, 2022, in view of the prevailing situation due to COVID-19 pandemic across the country.

5. Clarification on Continuity of Concessional tax rate under section 115AD (Press Release Dated 17.03.2021)

In view of certain media reports, the Ministry of Finance has clarified that the concessional rate of tax of 5% under the Proviso to section 115AD(1)(i) shall continue to be applicable for interest income referred to in section 194-LD of the Act and there is no change in the said proviso even after amendment of section 115AD vide Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020.



2 Vivad se Vishwas Act, 2020 -Search Case (C.B.D.T. Cir.No. 4/2020,dated 23.03.2021)

FAQ No. 70 of C.B.D.T. Circular No. 21/2020 clarified eligibility for search case under Vivad se Vishwas Scheme. In order to remove any uncertainty in this regard, C.B.D.T. has clarified vide this circular that a 'search case' means an assessment or reassessment made under sections 143(3) / 144 / 147 / 153A / 153C / 158BC of the Income-tax Act in the case of a person referred to in section 153A or section 153C or section 158BC or section 158BD of the Income-tax Act on the basis of search initiated under section 132, or requisition made under section 132A of the Income-tax Act.

Accordingly, The FAQ No. 70 of Circular No. 21/2020 stands modified to this extent.

4. Insertion of Rule 29BA in regard to online application for Certificate for Lower T.D.S. on payment to N.R.I. (C.B.D.T. Notification No. 18/2021, Dated 16.03.2021)

The C.B.D.T. has inserted Rule 29BA for making an e-application for grant of certificate for lower deduction of tax at source on sum (other than Salary), payable to non-resident, under sub-section (2) or sub-section (7) of section 195(2) or section 195(7) shall be made in Form 15E electronically.

LANDMARK DECISIONS UNDER INCOME TAX

Payment of Software to Non-Resident is not 'Royalty' & no withholding of tax required U/sec 195

The Supreme Court in the case of Centre of Excellence (P) Ltd V/s C.I.T. 125 taxmann.com 42 has held that there is no obligation to withholding taxes under section 195 on amount paid, by resident to non-resident computer software manufacturers/suppliers, as consideration for sale of software under distribution agreements/Exclusive User of License Agreement (EULA). Such distribution agreements/EULAs does not create any interest or right in such distributors/end-users, which would amount to the use of or right to use any copyright, as contained in the definition of royalties, defined by Article 12 of DTAAs.



COMPANY LAW UPDATES

A. Amendment in Form INC-35 related to incorporation of Company:

An option to perform Aadhar authentication for GSTIN registration has been provided in Form INC-35 under Companies (Incorporation) Third Amendment Rules, 2021.

Rules can be accessed at:

http://www.mca.gov.in/Ministry/pdf/CompaniesIncorporation3rdAmndtRules_11032021.pdf

B. Companies (Management and Administration) Rules, 2014:

The Rule amends the annual return filing Form MGT-7 for all Companies other than One Person Company and Small Company. Further, it also prescribes a new Form MGT-7A for annual return filing of One Person Company and Small Company. Various terms have also been defined such as 'Nidhi', 'agency', 'cut-off date', 'cyber security', 'electronic voting system', 'remote e-voting', 'secured system' and 'voting by electronic means' by adding explanations under the Rules.

Rules can be accessed at:

http://www.mca.gov.in/Ministry/pdf/CompaniesMgmtAdminAmndtRules_11032021.pdf

C. Use of Accounting Software with Audit Trail:

It is clarified that for the financial year commencing on or after the 1st day of April, 2022, every company which uses accounting software for maintaining its books of account, shall use only such accounting software which has a feature of recording audit trail of each and every transaction, creating an edit log of each change made in books of account along with the date when such changes were made and ensuring that the audit trail cannot be disabled.

Rules can be accessed at:

http://www.mca.gov.in/Ministry/pdf/AccountsAmendmentRules_24032021.pdf
http://www.mca.gov.in/Ministry/pdf/AccountsAmendmentRules_01042021.pdf

D. Additional Disclosures in Board Report:

Following additional disclosures are required to be made in report of the Board for companies other than small and one person companies w.e.f. April 1, 2021

- (i) The details of application made or any proceeding pending under the Insolvency and Bankruptcy Code, 2016 during the year along with their status as at the end of the financial year ; and
- (ii) The details of difference between amount of the valuation done at the time of one time settlement and the valuation done while taking loan from the Banks or Financial Institutions along with the reasons thereof.

Rules can be accessed at:

http://www.mca.gov.in/Ministry/pdf/AccountsAmendmentRules_24032021.pdf

E. Additional Reporting Requirements by an Auditor:

(Point no. i and ii effective from April 01, 2021 and point no. iii effective from April 01, 2022)

Following additional reporting requirements are added in the report of statutory auditor of the company:

(i) Reporting with respect to usage of Funds :

- (a) Whether the management has represented that, to the best of its knowledge and belief, other than as disclosed in the notes to the accounts, no funds have been advanced or loaned or invested (either from borrowed funds or share premium or any other sources or kind of funds) by the company to or in any other person(s) or entity(ies), including foreign entities ("Intermediaries"), with the understanding, whether recorded in writing or otherwise, that the Intermediary shall, whether, directly or indirectly lend or invest in other persons or entities identified in any manner whatsoever by or on behalf of the company ("Ultimate Beneficiaries") or provide any guarantee, security or the like on behalf of the Ultimate Beneficiaries;
- (b) Whether the management has represented, that, to the best of its knowledge and belief, other than as disclosed in the notes to the accounts, no funds have been received by the company from any person(s) or entity(ies), including foreign entities ("Funding Parties"), with the understanding, whether recorded in writing or otherwise, that the company shall, whether, directly or indirectly, lend or invest in other persons or entities identified in any manner whatsoever by or on behalf of the Funding Party ("Ultimate Beneficiaries") or provide any guarantee, security or the like on behalf of the Ultimate Beneficiaries; and
- (c) Based on such audit procedures that the auditor has considered reasonable and appropriate in the circumstances, nothing has come to their notice that has caused them to believe that the representations under sub-clause (i) and (ii) contain any material mis-statement.

(ii) Reporting on Dividend related compliance :

Whether the dividend declared or paid during the year by the company is in compliance with section 123 of the Companies Act, 2013.

(iii) Reporting on audit trail of accounting software :

Whether the company, in respect of financial years commencing on or after April 1, 2022, has used such accounting software for maintaining its books of account which has a feature of recording audit trail (edit log) facility and the same has been operated throughout the year for all transactions recorded in the software and the audit trail feature has not been tampered with and the audit trail has been preserved by the company as per the statutory requirements for record retention.

Rules can be accessed at:

http://www.mca.gov.in/Ministry/pdf/AuditAuditorsAmendmentRules_24032021.pdf
http://www.mca.gov.in/Ministry/pdf/AuditAuditorsAmendmentRules_01042021.pdf

F. Remuneration Limit for Non-executive and Independent Directors:

(Effective from date of notification)

In case where company is not having profit or having inadequate profit, it may pay maximum remuneration to managerial person or other directors (i.e. **non-executive and independent directors**) as per below table:

Sr No.	Effective Capital (in Rs.)	Limit of yearly remuneration (in Rs.) for	
		Managerial Person	Other Director
1	Negative or less than 5 crores	60 Lakhs	12 Lakhs
2	5 crores and above but less than 100 crores	84 Lakhs	17 Lakhs
3	100 crores and above but less than 250 crores	120 Lakhs	24 Lakhs
4	250 crores and above	120 lakhs plus 0.01% of the effective capital in excess of Rs.250 crores	24 Lakhs plus 0.01% of the effective capital in excess of Rs.250 crores

Rules can be accessed at:

http://www.mca.gov.in/Ministry/pdf/AmendmentNotification_19032021.pdf

G. Amendment in Schedule III – Financial Reporting Framework:

(Effective from April 01, 2021)

MCA has amended Division I, II and III (i.e. both IGAAP and Ind AS Financial Reporting Framework) of Schedule III by adding various new disclosure requirements such as:

- a. Disclosure of Promoters Shareholding
- b. Ageing of Trade Payables with age upto 1 year, 1-2 year, 2-3 year & More than 3 years
- c. Reconciliation of the gross and net carrying amounts of each class of property, plant and equipment and intangible assets
- d. Ageing of Trade Receivables with age less than 6 months, 6 months to 1 year, 1-2 year, 2-3 year & More than 3 years
- e. Detailed disclosure regarding title deeds of Immovable Property not held in name of the Company.
- f. Disclosure regarding revaluation of property, plant and equipment
- g. Ageing of capital work in progress and intangible assets under development with age upto 1 year, 1-2 year, 2-3 year & More than 3 years.
- h. Loans or Advances granted to promoters, directors, KMPs and the related parties
- i. Details of Benami Property held
- j. Reconciliation and reasons of material discrepancies, in quarterly statements submitted to bank and books of accounts.
- k. Disclosure where a company is a declared wilful defaulter by any bank or financial institution
- l. Relationship with Struck off companies
- m. Pending registration of charges or satisfaction with Registrar of Companies
- n. Compliance with number of layers of companies
- o. Disclosure of 11 financial ratios and explanation for any change beyond 25% as compared to preceding year
- p. Compliance with approved Scheme(s) of Arrangements
- q. Utilisation of Borrowed funds and share premium
- r. Details of transaction not recorded in the books that has been surrendered or disclosed as income in the tax assessments
- s. Disclosure regarding Corporate Social Responsibility
- t. Details of Crypto Currency or Virtual Currency

Notification can be accessed at:

http://www.mca.gov.in/Ministry/pdf/ScheduleIIIAmendmentNotification_24032021.pdf

SEBI UPDATES



A. Master Circular on Surveillance of Securities Market:

Securities and Exchange Board of India (SEBI) from time to time, has been issuing various circulars for effective surveillance of the securities market. In order to enable the users to have access to all the applicable circulars at one place, the Master Circular on Surveillance of Securities Market has been prepared which is a compilation of the circulars issued by operational Integrated Surveillance Department. In case of any inconsistency between the Master Circular and the applicable circulars, the content of the relevant circular shall prevail.

Master circular can be accessed at:

https://www.sebi.gov.in/legal/master-circulars/mar-2021/master-circular-on-surveillance-of-securities-market_49354.html

B. Transfer of business by SEBI registered intermediaries to other legal entity:

In case of transfer of business (SEBI regulated business activity) from one legal entity which is a SEBI registered Intermediary (transferor) to other legal entity (transferee), the transferee shall obtain fresh registration from SEBI in the same capacity before the transfer of business if it not registered with SEBI in the same capacity.

If the transferor ceases to exist or in case of complete transfer of business by transferor, its certificate of registration shall be surrendered. In case of partial transfer of business by transferor, it can continue to hold certificate of registration.

Circular can be accessed at:

https://www.sebi.gov.in/legal/circulars/mar-2021/transfer-of-business-by-sebi-registered-intermediaries-to-other-legal-entity_49678.html

C. Prior approval for Change in control:

With respect to effect on change in control due to transfer of shareholdings among immediate relatives and transmission of shareholdings, following has been clarified:

Type of Transfer / Transmission	Effect on Change in Control	Prior Approval of SEBI
Transfer / transmission of shareholding in case of unlisted body corporate intermediary	Transfer of shareholding among immediate relatives shall not result into change in control	No
Transfer / transmission of shareholding in case of a proprietary firm type of intermediary	The transfer or bequeathing of the business / capital by way of transmission to another person is a change in the legal formation or ownership and hence considered as change in control	Yes, by legal heir / transferee

Transfer of ownership interest in case of partnership firm	A) Inter-se transfer amongst the partners shall not be construed to be change in control	No
	B) Transfer to a new partner added to the firm would be considered as a change in control	Yes, fresh registration is required
Transmission of ownership interest in case of partnership firm	Bequeathing of partnership right to legal heir(s) by way of transmission shall not be considered as change in control	No

Circular can be accessed at:

https://www.sebi.gov.in/legal/circulars/mar-2021/prior-approval-for-change-in-control-transfer-of-shareholdings-among-immediate-relatives-and-transmission-of-shareholdings-and-their-effect-on-change-in-control_49663.html

D. Delivery default norms in the commodity derivative segment:

The following delivery default norms in the commodity derivative segment has been determined in consultation with Clearing Corporations:

- In agricultural commodities, the penalty for delivery default by seller shall be 4% of the settlement price plus replacement cost.
- In non-agricultural commodities, the penalty for delivery default by seller shall remain at 3% of settlement price plus replacement cost.

Further, following norms for apportionment of penalty has been determined:

- At least 1.75% of Settlement Price shall be deposited in the Settlement Guarantee Fund (SGF) of the Clearing Corporation.
- Up to 0.25% of Settlement Price may be retained by the Clearing Corporation towards administration expenses.
- (1% of Settlement Price in case of non-agri goods or 2% of settlement price in case of agri goods) plus replacement cost shall go to buyer who was entitled to receive delivery.

Circular can be accessed at:

https://www.sebi.gov.in/legal/circulars/mar-2021/review-of-delivery-default-norms_49610.html

ACCOUNTING UPDATES



A. ICAI Announcement

Criteria for classification of Non-company entities for applicability of Accounting Standards

1. The Institute of Chartered Accountants of India (ICAI) has, in recent Council meeting, considered the matter relating to applicability of Accounting Standards (AS) issued by the ICAI to non-company entities. The scheme for applicability of AS to non-company entities shall come into effect in respect of accounting periods commencing on or after April 01, 2020.
2. For the purpose of applicability of AS, non-company entities are classified into four categories viz. Level I, Level II, Level III and Level IV.

Level I Large size Entities	Level II Medium Size Entities	Level III Small Size Entities	Level IV Micro Entities
<ul style="list-style-type: none"> - Entities whose securities are listed or are in process of listing on any stock exchange in India or outside India. - Banks (including Co-operative banks), financial institutions or entities having insurance business. - Entities engaged in commercial, industrial or business activities <ul style="list-style-type: none"> • turnover (excluding other income) exceeds Rs. 250 crore in the immediately preceding accounting year • borrowing (including public deposits) in excess of Rs. 50 crore at any time during the immediately preceding accounting year. - Holding & subsidiary entities of any one of above 	<ul style="list-style-type: none"> - Entities engaged in commercial, industrial or business activities <ul style="list-style-type: none"> • turnover (excluding other income) exceeds Rs. 50 crore but does not exceed Rs. 250 crore in the immediately preceding accounting year • borrowing (including public deposits) in excess of Rs. 10 crore but not exceed Rs. 50 crore at any time during the immediately preceding accounting year. - Holding & subsidiary entities of any one of above 	<ul style="list-style-type: none"> - Entities engaged in commercial, industrial or business activities <ul style="list-style-type: none"> • turnover (excluding other income) exceeds Rs. 10 crore but does not exceed Rs. 50 crore in the immediately preceding accounting year • borrowing (including public deposits) in excess of Rs. 2 crore but not exceed Rs. 10 crore at any time during the immediately preceding accounting year. - Holding & subsidiary entities of any one of above 	<ul style="list-style-type: none"> - Entities which are not covered under Level I, II and III

3. Level I entities are required to comply in full with all the AS. Certain exemptions / relaxations have been provided to entities covered under Level II, III and IV.
4. This Announcement is not relevant for non-companies entities who may be required to follow Ind AS as per relevant regulatory requirements applicable to such entities.

The Announcement can be accessed at :

<https://resource.cdn.icai.org/64269asb51535.pdf>

B. EAC Opinion:

Expert Advisory Committee (EAC) of ICAI has provided an Opinion on Classification of Advances for Infrastructure Projects to be leased.

The relevant text of the Opinion is reproduced below:

“The Committee notes that a financial asset is a contractual right to receive cash or another financial asset. The Committee is of the view that pre-lease payment in the extant case has been defined in a manner to ensure that the Company shall be paid against the pre-lease disbursement made along with interest accrued on it as per the MoU so as to ensure that the Company is never short of cash. Thus, there is a contractual right to receive cash against such disbursement and interest accrued thereon as per MoU. Also, considering the facts of the case, it is apparent that both the PSU and the Ministry have an intent to make repayment against the disbursement made, after the moratorium period of 5 years from the date of disbursement irrespective of the fact whether asset is ready for use or not. Therefore, the Committee is of the view that prelease disbursement in the extant case meets the definition of ‘financial asset’ as per IndAS 32 and should be presented as ‘other financial asset’.”

EAC Opinion can be accessed at:

<https://resource.cdn.icai.org/63214cajournal-mar2021-12.pdf>

DUE DATES OF VARIOUS COMPLIANCES FALLING IN THE MONTH OF APRIL 2021



Due dates of various compliances falling in the month of April 2021

Due Date	Act/Authority	Compliance Description
07-04-2021	GujRera	In case of projects whose dynamic quarter completes in March- 2021
07-04-2021	Income Tax	Deposit of Tax Collected at source (TCS) during the month of March-2021
10-04-2021	GST	GSTR-7/GSTR-8 for the month of March-2021 for persons required to deduct TDS
10-04-2021	GST	GSTR-8 for the month of March -2021 for e-commerce operator required to Collect TCS
11-04-2021	GST	GSTR-1 for the month of March-2021 for taxpayers opted to file Monthly Return
13-04-2021	GST	Filing of GSTR-1 for the quarter ended March-2021 for taxpayers who opted for Quarterly Return Monthly payment(QRMP) Option
13-04-2021	GST	GSTR-6 for the month of March-2021 for Input Service Distributor
15-04-2021	PF/ESIC	Payment of PF / ESIC for the month of March-2021
18-04-2021	GST	CMP-08 for the quarter ended on March-2021 for composition Dealer
20-04-2021	GST	Payment of GST & Filing of GSTR-3B for the month ended March-2021 for taxpayers opted for Monthly return
22-04-2021	GST	Payment of GST & Filing of GSTR-3B for the Quarter ended March-2021 for taxpayers who opted for Quarterly Return Monthly payment(QRMP) Option depending on place of business(State)
24-04-2021		Payment of GST & Filing of GSTR-3B for the Quarter ended March-2021 for taxpayers who opted for Quarterly Return Monthly payment(QRMP) Option depending on place of business(State)
20-04-2021	GST	GSTR-5 & 5A by Non-resident taxable person & OIDAR for the month of March-2021
30-04-2021	GST	Opting in/out of Quarterly Return Monthly Payment (QRMP) option
30-04-2021	Income Tax	Deposit of Tax Deducted at Source (TDS) during the month of March-2021
30-04-2021	Income Tax	Payment of Tax without additional interest under Direct Tax Vivad Se Vishwas Act, 2020

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